

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SHEILA KING

PLAINTIFF

V.

CIVIL ACTION NO. 3:23-CV-3109-DPJ-ASH

JACKSON PUBLIC SCHOOL DISTRICT

DEFENDANT

ORDER

This case is before the Court sua sponte to consider Federal Rule of Civil Procedure 25. Under Rule 25, when a party dies, if a motion for substitution of a proper party “is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1).

On July 15, 2024, Defendant JPSD filed a Suggestion of Death [16], stating that Plaintiff Sheila King had died. King was proceeding pro se, and JPSD mailed the Suggestion of Death to King’s address listed on the docket. *See* Suggestion of Death [16] at 2. Ninety days have passed since Defendant filed the Suggestion of Death. But “in order for the ninety-day deadline to run under Rule 25, the suggestion of death must have been personally served on the deceased-plaintiff’s estate pursuant to Rule 4.” *Sampson v. ASC Indus.*, 780 F.3d 679, 682 (5th Cir. 2015); *see also Lewis v. Flowers*, No. 1:15-CV-116-HSO-JCG, 2016 WL 3162065, at *2 (S.D. Miss. June 3, 2016) (denying motions to dismiss because defendant failed to serve deceased pro se plaintiff’s estate before seeking Rule 25 dismissal).

The Court recognizes that “[i]n some instances, it may prove more difficult to determine whom to serve, but it is generally appropriate to require the serving party to shoulder that burden, rather than permitting the absence of notice to decedent’s representative to lead to forfeiture of the action.” *Id.* (quoting *Fariss v. Lynchburg Foundry*, 769 F.2d 958, 961 (4th Cir. 1985)).

Here, it is unclear from the docket whether JPSD has attempted proper service, and it has not sought dismissal. That leaves the case in limbo.

JPSD is therefore ordered to provide a status report within 14 days of this Order.

SO ORDERED AND ADJUDGED this the 1st day of November, 2024.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE